IN THE HIGH COURT OF JUDICATURE AT BOMABY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.4862 OF 2005

Damu Genu Salgar. ..Pdtitioner.
Vs.
Mahadeo P. Ghodke and ors. ..Respondent.

Nayana Thathe holding for Ambar Joshi for the Petitioner.

Mr. Vilas Tapkir for the Respondent.

CORAM: SMT.RANJANA DESAI,J.
DATED: 21.9.2005.

PC:

1. In this writ petition original defendant No.3 had challenged the order dated 7.10.2004 passed in Civil Misc. Application No.203/2000. By the impugned order, the application filed by defendant No.3 praying for condonation of delay in filing the appeal was rejected. There is one year and six months delay in filing the appeal.

2. I have heard at some length, the learned counsel appearing for the petitioner/defendant No.3. She contended that the decree dated 17.6.1999 is exparte. The suit summons was not served on defendant No.3. Defendant No.3 came to know about the exparte decree on 13.11.2000, when the notice of execution was served on him. Thereafter, on 22.11.2000 the instant application

was filed. She submitted that, in the circumstances, The Trial Court erred in not condoning the delay.

3. The learned counsel for the respondent has rightly drawn my attention to the observations made by the Lower Appellate Court that the suit summons was served on the defendant No.3 on 2.7.1998. Therefore, the case that the suit summons was not served is not correct. There is substance in the contention of the learned counsel for the respondent that the delay is not properly explained. However, in my opinion, in the interest of justice, since the decree is exparte, the delay deserves to be condoned after imposing heavy costs on defendant No.3. Hence, I pass the following order.

ORDER

a) The impugned order dated 7.10.2004.10.2004 passed by the Addl. District Judge, Pandharpur in Misc. Civil Application No.203/2000 is set aside.

b) The delay in filing the appeal is condoned on a condition that the petitioner/defendant No.3 pays costs quantified at Rs.8000/- to the plaintiff. The payment of costs shall be condition precedent to the

restoration of the appeal.

c) The learned counsel for the petitioner states that the costs will be paid within three weeks. After costs are paid, the Lower Appellate Court shall restore the appeal and decide it as expeditiously as possible.

d) Petition disposed of in the aforestated terms.

(SMT. RANJANA DESAI, J.)